(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The
Supreme Court of the United States

JOSEPH FESSLER,
Petitioner,

v.

LAWRENCE KARIS, CONSTABLE,
EDWARD HOLLERMAN,
CONSTABLE PETER ROMANOSKI
Respondent(s).

On the Petition for a Writ Of Certiorari
To The United States Court of Appeals
For The Third Circuit

PETITION FOR A WRIT OF CERTIORARI

Joseph Fessler
Pro Se
20 Solomon Street
Ashley, PA 18706
Ph. 570/826-0060

26 PP

QUESTIONS PRESENTED

Why wasn't the civil rights issue addressed 42-USC91983 according to Middle District Judge Vanaskie? I Feel I have a claim for violation of Joseph Fessler's rights under the 14th Amendment.

Why the Courts made a Judgment without having all the information and records from Justice Michael Collins' files. Justice Collins was released from the lawsuit because of his death. I made a stipulation all files would be turned over to the Court, Third Circuit, also all parties included.

Why has the Court, Third Circuit, District Court and Justice Michael Collins condoned acts of the constables, while ignoring the Civil Rights of an individual - Joseph Fessler?

Why was fraud and/or double jeopardy not addressed as part of judgment on the car; when all documents were sent to the court and prove that Joseph Fessler was sole owner of the car given on first judgment, then cannot be resold on second judgment?

Why did the courts consider the constable's information as the truth, completely ignoring Joseph Fessler's information?

Why were the legal actions of the sale and transfer of the 1985 Oldsmobile car not done according to the law?

Why did the same law firm represent all the defendants when Constables were working for Fessler?

Why was Fessler forced to take District Justice Collins to Federal Court because he can't be sued in Pennsylvania State Court? That is why Joseph Fessler had to take all defendants to Federal State Court.

Why did Constable Holleran commit perjury under oath for two different prices of the 1985 Oldsmobile car in the Courts? Joseph Fessler sent papers to the courts regarding this matter.

Why did Constable Holleran call Joseph Fessler August 25, 1996, the date before the car sale, for him to accept the Judgment for the car? He assured Mr. Fessler that he would be able to receive payment of $1000 for the car.

Why did Constable Holleran change the location of the car? Was the car hidden from the Public and Mr. Fessler so that a mechanic could not check it out?

Why was the notice of Executor Sale and purchasing slip signed by Joseph Fessler, Constable Holleran and Peter Romanoski on August 26, 1996 for docket # LT130-96 for $962.00? This made Joseph Fessler sole owner of the car. All courts missed this information. Why did constable Lawrence Karis and Peter Romanoski enter a second judgment for the same car as for the first

Judgment? In Joseph Fessler's opinion this is committing fraud and double jeopardy against Joseph Fessler for car docket #CV 246-96.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner, Joseph Fessler, respectfully requests that a Writ of certiorari issue to review the Judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The Opinions of the United States Court of Appeals for the Third Circuit, of which review is sought, a copy of the September 28, 2001 opinion is reproduced as Apdx. A1.

JURISDICTIONAL STATEMENT

On October 6, 2001, appealed the Third Circuit Court of Appeals for rehearsing. Third Circuit Court denied Petitioner's Petition for rehearsing on November 21, 2001. Apdx B1.

The jurisdiction of this Court to review the judgment and opinion of The Third Circuit is invoked pursuant to 28 U.S.C. & 1254 (1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fourteenth Amendment U.S. Constitution
42 U.S.C. & 1983

STATEMENT OF THE CASE

This is regarding Peter Romanoski, who owes me (Joseph Fessler) $962.00 judgment for back rent. Constable Edward Holleran was to collect this judgment. He informed me that Peter Romanoski had a car and that, if I accepted it, I would be able to get $1000 for my judgment.

He called and said all papers were posted in the Magistrate's Office for the sale of the car. He called me the day before the sale and informed me that I would get $1000.00 for the car, and changed the location of the sale from Romanoski's apartment to My Brother's Place (a furniture store), which was a distance.

I accepted the car on his judgment on August 26, 1996. Docket #LT130-96. Holleran filled out Executor Sale and purchasing slip, signed by Joseph Fessler, Constable Edward Holleran, and Peter Romanoski, making Joseph Fessler sole owner of the car.

After driving the car, I concluded it was a wreck. I wrote a letter and sent it certified to Justice Michael Collins. In the letter, I requested to return the car because a mechanic and body shop said it was worth only $75.00. A hearing date of October 18, 1996 was set.

At the hearing, Romanoski and Holleran said the car was worth $1000.00. Magistrate Collins it was worth $500.00. I appealed to PA Luzerne County Court. A hearing was held and Judge Ciavarella dismissed it. Magistrate Justice W. Collins failed to notify the court or Prothonotary's Office regarding his report on the cost of the car and the judgment he made. I believe that this is the

reason why the case was dismissed.

I filed a Complaint with Justice Collins regarding Edward Holleran, He refused to accept it. He said no charges were warranted. I then accepted a second judgment for rent for $554.60 from Peter Romanoski. Constable Lawrence Karis was to collect that for me. He called me and told me that it was worth $200.00. I told him that was another judgment for $962.00. He then said he had the title to the car. He then called me and said that I didn't pay him enough money to pay his fees.

I wrote to Justice Collins about it and he wrote back and said Constable Karis was paid his fee in full and that I accepted the car. Also he sent back Officer's return form signed by Constable Karis that I accepted the car for second judgment of CV-246-96. Karis never said what kind of car it was - model or year. He cannot use the same car for the second Judgment. I owned the car from the fist judgment. He should have checked these forms out. This should be considered fraud or double jeopardy against Peter Romanoski and Lawrence Karis. Justice Michael Collins should have known this because I was in front of him four times regarding this car.

I took Justice Michael Collins, Constable Edward Holleran, Constable Karis, and Peter Romanoski to PA court. I had to release all parties except Peter Romanoski because I was told that I could not sue them in PA Court. That is why I took it to Federal Court regarding violating my Civil Rights because PA Court does not accept this.

The Court should realize why I paid Constable Holleran $110.00 and Constable Karis $85.00 for a car that I found out was worth only $75.00.

Constable Holleran and Constable Karis did not take me to the Notary Public to get the proper paperwork for the title of the car or make sure that there was no lien. This would have eliminated the second judgment.

Anyone can see Justice Collins, Constable Edward Holleran, and Lawrence Karis were working for Peter Romanoski. They were paid by Joseph Fessler and not working on his behalf.

REASONS FOR GRANTING THE WRIT

Fessler claims that the Constables violated his rights relating to the Judgment against Romanoski. The rights were violated because of the First Judgment shown with documents sent to the Courts with Docket #LT130-96, making Fessler the sole owner, signed by Edward Holleran, Peter Romanoski, and Joseph Fessler. They cannot resell this back to Fessler without permission and documents to prove the second Judgment is legal.

This is fraud and double jeopardy by Constable Lawrence Karis and Peter Romanoski. The constables violated Mr. Fessler's rights under the Fourteenth Amendment.

The Courts should not have dismissed Romanoski from the lawsuit because he knowingly signed both judg

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: LUZERNE

11-1-01

MICHAEL J. COLLINS
106 SOUTH MAIN STREET
WILKES BARRE, PA

(717) 825-7373 18701-1612

EXECUTING OFFICER'S RETURN

PLAINTIFF
FESSLER, JOSEPH
20 SOLOMON STREET
ASHLEY, PA 18706

VS.

DEFENDANT:
ROMANOSKI, PETER JOHN
673 SHERIDAN MANOR
WILKES-BARRE, PA 18702

MICHAEL J. COLLINS
106 SOUTH MAIN STREET
WILKES BARRE, PA 18701-1612

Docket No.: CV-0000246-96
Date Filed: 7/17/96

1. LEVY DATE and TIME: 1-29-97-2:04PM PLACE: 673 SHERIDAN MANOR ~~BARRE~~ WB

(ATTACH SCHEDULE OF PROPERTY LEVIED UPON AND SET ASIDE)

☐ NO LEVY (STATE REASON): _____

2. AGENCIES NOTIFIED: _____

3. SALE BILLS POSTED: 2-24-97 (Date) 106 SOUTH MAIN ST WB PA (Place)

4. COPY OF NOTICE OF EXECUTION SALE MAILED TO DEFENDANT: 2-24-97 (Date)

673 SHERIDAN MANOR W B PA (Address)

5. SALE: DATE: _____ PLACE: _____

TIME: _____ PROCEEDS: _____

PURCHASER(S)*: PLAINTIFF ACCEPTED CAR ____ FOR AMOUNT OF JUDGEMENT $54.60

6. EXECUTION EXPENSES AND FEES: $ 91.20

7. DISTRIBUTION: _____

* IF PROPERTY IS PURCHASED BY PLAINTIFF, SPECIFY THE AMOUNT OF PLAINTIFF'S RECEPT CREDITED UPON PURCHASE PRICE ..... $ _____

(Signature of Sheriff or Constable)

(Print Name and Title)

AOPC 305C-92

NOTICE OF EXECUTION SALE

By virtue of certain ORDER(S) of EXECUTION, directed to me, I will expose to PUBLIC SALE

on: MONDAY the 26TH day of AUGUST, 1996 at 9AM o'clock

at the following location: (address) 673 SHERIDAN MANOR APTS

the following articles, property of, PETER JOHN ROMANOWSKI:

1-1985 OLDSMOBILE JETFIRE 4DR MAROON

VIN# 1G3AM19E5FR378327

TITLE 37376987603

PA REG FOP 93

1. All claims to the property must be filed before this sale in the office of: MICHAEL J COLLINS, District Justice
   Address: 108 SOUTH MAIN STREET WILKES BARRE, PA 18701-1612
2. All claims to the proceeds must be filed in the above district justice office before distribution.
3. A schedule of distribution will be filed in the above district justice office on (Date): _____ and distribution will be made in accordance therewith unless exceptions are filed within ten (10) days thereafter.

Date: 7-27-96 by: Edward J. Fabian Sheriff or Constable

Order of Execution No.: LT-130-96 Claim No.: _____

from: _____, issuing District Justice Magisterial District No.: _____

from: Michael Collins, District Justice Magisterial District No.: 11-1-01

26 Aug - 96 8:15AM

Mrs Joseph Fenster agreed to take Valium in lieu of Pagmart to satisfy judgment on LT 130-96

Joseph Fenster
Peter J Romanoski

ments, making him commit fraud and double jeopardy with Constables.

Enclosed are documents to prove this. This will prove that Justice Michael Collins' letter dated November 21, 1997 is false; that is why I took legal action against him. All Courts are going by this document.

I am attempting to proceed under 42 U.S.C. &1983 because person who failed to give the correct information who did not tell the truth to the court made false statements - all are Constables, defendants. They should be subject to 42 USC &1983 Civil action deprivation of rights. Every person who, under color of any State ordinance, regulation, custom, or usage of the state Territory, subjects or causes to be subjected, any citizen of the United States or the person within the jurisdiction thereof to the Deprivation of any rights, privileges, or immunities secured by Constitution and law shall be liable to the party injured in action law, suit in equity, or other proper proceeding for redress.

CONCLUSION

For the reason stated above the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

Joseph Fessler
20 Solomon Street
Ashley, PA 18706
Ph. 570/826-0060

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOSEPH A. FESSLER, *Plaintiff* vs. MICHAEL COLINS, LAWRENCE KARIS, EDWARD HOLLERAN, and PETER J. ROMANOSKI, *Defedants*	CIVIL ACTION NO. 3: CV-99-1324 (CHIEF JUDGE VANASKIE) FILED SCRANTON APR 19 2000

ORDER
April 19, 2000

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The plaintiff, Joseph Fessler, commenced this suit on July 27, 1999, averring that the defendants violated his civil rights. (DKT. Entry 1.) The suit concerns prior proceedings in Luzerne County before defendant District Justice Michael Collins and Fessler's attempts to recover judgments against one of the other defendants, Peter J. Romanoski. Two constables, defendants Lawrence Karis and Edward Holleran, were involved in Fessler's attempt to satisfy the judgments against Romanoski. The Constables assisted in the transfer of an automobile from Romanoski to Fessler in satisfaction, or partial satisfaction of the judgments.

Fessler's pro se complaint is, at times, difficult to follow: it charges the defendants with unspecified violations of the "Civic Rights Act of 1964, and Civil Rights Act of 1968, or any other Act of Civil Rights...." (Id. At 5.) Fessler's complaint implicates

decisions made by District Justice Collins with respect to the value of an automobile that was transferred to Fessler in partial satisfaction of a judgment Fessler had secured against Romanoski. In a letter dated October 18, 1996, under docket number LT-130-96, District Justice Collins assigned a value of $500 to the car, with there then remaining a balance of $462 due on Fessler's judgment against Romanoski. (See letter of Oct. 18, 1996 attached to Fessler's complaint.) The letter advised the parties of their right to appeal. It appears that Fessler appealed that decision and that the Luzerne Court of Common Pleas dismissed Fessler's claims.

Fessler contends that District Justice "Collins failed to notify the Court...regarding his report on the cost of the care and judgment he made." (Id. at 2.) He also asserts that District Justice Collins erroneously allowed the same car to satisfy two judgments.

Fessler's claims against the Constables relate to the value of the automobile and Fessler's contention that the Constables allowed Romanoski to satisfy two judgments with the single car. Fessler avers that Constable Holleran "failed to give an honest price of the car." (Id. at 4.) Fessler avers that Constable Karis "used a second judgment on the car which is illegal." (Id.) Last, Fessler avers that Romanoski "used the same car for the second judgment." (Id..)

It appears that prior to the instigation of this case, Fessler named the same defendants in a civil case before the Court of Common Pleas of Luzerne Count (No.1682-C-98, filed March 25, 1998). On May 21, 1998, Fessler withdrew his complaint against the District Justice and the Constables, leaving only Romanoski as defendant.

District Justice Collins has moved to dismiss the claims against him on the basis of absolute judicial immunity. (Dkt.

Entry 6.) The Constables have moved to quash service, to failure to state a claim, and for a more definite statement of the claims. (Dkt. Entry 4.) Romanoski has moved to quash service, to dismiss for failure to state a claim, and for a more definite statement of the claims. (Dkt. Entry 15.)

A. Claims Against District Justice Collins[1]

The United States Supreme Court has consistently ruled that judicial officer, acting within his jurisdiction and in a judicial capacity, is absolutely immune from suits for money damages.

> Although unfairness and injustice to a litigant may result on occasion "it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself."

Mireles v. Waco, 502 U.S. 9,13 (1991) (quoting *Bradley v. Fisher*, 80 U.S. 335 (1872)). *See also Stump v. Sparkman*, 435 U.S. 349 (1978); *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967) ("Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction"); *Dennis v. Sparks*, 449 U.S. 24 (1980). It is readily apparent that Fessler's claims against District Justice Collins relate to the Justice's actions and only to his judicial actions.[2]

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[1] A court may grant a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) only if, accepting all allegations in the complaint as true and viewing them in the light most favorable to a plaintiff, the plaintiff is not entitled to relief. Bartholomew v. Fischl, 782 F.2d 1148, 1152 (3d Cir. 1986).

[2] Fessler's response (Dkt Entry 10) to District Justice Collins' motion does not in (continued...)

Accordingly I will grant District Justice Collins' motion to dismiss the complaint on the grounds of judicial immunity.

B. Holleran and Karis' Motion to Dismiss for Failure to State a Claim

Fessler's complaint is broad and ambiguous. The gist of his claims is that the Constables violated his rights relating to the judgments against Romanoski. He does not specify what constitutionally-protected rights were violated. The only apparent claim is that they were responsible for the deprivation of property (Fessler's judgment) without due process of law. Although his pleading does not assert a claim in those terms, I will give this pro se plaintiff the benefit of the doubt in construing his complaint, and consider his claim as if he had presented a 42 U.S.C. § 1983 claim averring that the defendants violated his rights under the Fourteenth Amendment's due process clause.

Fessler's complaint directly implicates the state court's proceedings. As noted above, a state court judicial officer has determined the value of the car in question in relation to one judgment and, according to Fessler, has determined that the car was accepted by Fessler in satisfaction of a second judgment. (See District Justice Collins' letter of November 21, 1997 attached to Fessler's complaint.)

It is obvious that Fessler had available state procedures to contest both determinations. As to the first matter, Fessler could have pursued his appeals to the

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[2] (...continued) any way suggest that the District Justice acted outside of his judicial duties; it merely notes that the acts in question were administrative duties Fessler argues that none of the cases that the District Justice cites is a civil rights case; but, in fact, many of the cases e.g., Stump v. Sparkman, 435 U.S. 349 (1978), deal with suits brought under 42 U.S.C. § 2983, the principal predicate for many civil rights actions.

valuation of the car. His claim in this case directly impacts on the decision made by District Justice Collins. Federal courts are not to entertain constitutional claims "that are inextricably intertwined with a state adjudication." *Whiteford v. Reed*, 155 F. 3d 671, 673-74 (3d Cir. 1998). That is the Rooker-Feldman" doctrine "precludes a federal action if the relief requested in the federal action would effectively reverse the state decision or void its ruling." Id.[3] Thus, the challenge to the valuation of the vehicle in relation to the first judgment is barred as the effect of a finding in Fessler's favor would be to reverse the state court decision. Having foregone state court avenues for challenging the state court decision, Fessler cannot turn to the federal court.

As to the contention that his second judgment against Romanoski was wrongly satisfied, Fessler had a right to seek to strike the satisfaction of judgment. Moreover, if Fessler claims that other Constables acted, either negligently or intentionally, to deprive him of property, the existence of state court actions against those Constables precludes a § 1983 action.

Unlike District Justice Collins, the Constables are not, in state court, immune for damages they may cause in executing their duties.[4] Pennsylvania courts have held that

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[3] *See Rooker v. Fidelity Trust Co.*, 363 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

[4] Pennsylvania law explicitly requires that constables submit a surety when they take their office (13 PACons. State. § 9), and that surety is available to persons whom a constable injuries by failure to carry out his duties. Section 87 of title 13 PA. Cons. Stat. empowers a court to compel that surety to compensate the wronged person. That section in pertinent part, reads: (continued...)

Constables are part of the judicial system and are amenable to suit in that capacity. *Reuben v O'Brien*, 229 Pa. Super 372, 445A.2d 801, 803 (1982). Accordingly Fessler could have sued the Constables in state court.

The law is clear that in a situation in which a pre-deprivation hearing is unavailable, if a plaintiff has recourse to state courts to prosecute a claim of intentional deprivation of property by a state actor, he may not bring a civil rights suit in federal court. *See Hudson v. Palmer*, 468 U.S. 517, 533 (1984). And a negligent deprivation of property does not give rise to a constitutional claim. *See Daniels v. Williams*, 474 U.S. 327, 330-31 (1986).

In *Hudson*, the United State Supreme Court extended the reasoning of *Parratt v. Taylor*, 451 U.S. 527 (1982), to conclude that even an intentional tort does not support a § 1983 claim if the plaintiff has state remedies available. In *Parratt*, the Court examined the claims of a state prisoner who brought suit under 42 U.S.C. §1983 to recover the value of hobby materials that prison officials had negligently lost. The Court considered the redress available to the prisoner in state courts and found that the existence of a state forum for his claims obviated the prisoner's contention that his property had been taken without due process.

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[4](...continued)
Any constable who has or may hereafter give security agreeably to law or the faithful performance of the duties of his office, and afterwards on neglecting or refusing to perform such duties shall have judgment entered against him...the justice before whom the judgment or judgments stand unpaid shall be and is hereby authorized ...[to] proceed against such bail for the recovery of judgments....

> Application of the principles recited above to this case leads us to conclude the respondent has not alleged a violation of the Due Process Clause of the Fourteenth Amendment. Although he has been deprived of property under color of state law, the deprivation did not occur as a result of some established state procedure...Moreover, the state...has provided respondent with the means by which he can receive redress for the deprivation...This procedure was in existence at the time of the loss here in question but respondent did not use it...Although the state remedies may not provide the respondent with all the relief which may have been available if he could have proceeded under § 1983, that does not mean that the state remedies are not adequate to satisfy the requirements of due process. The remedies provided could have fully compensated the respondent for the property loss he suffered and we hold that they are sufficient to satisfy the requirements of due process. Id. at 543-44

In *Hudson* the Court extended that reasoning, holding "that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available." Id. at 533.

In *Daniels v. Williams*, 474 U.S. 327, 330-31 (1986), the Court reaffirmed the reasoning of *Parratt and Hudson*, but overruled "*Parratt* to the extent that it states that mere lack of due care by a state official may 'deprive' an individual of life, liberty, or property under the Fourteenth Amendment." *Daniels* reiterated the distinction between constitutional and common law claims:

> That injuries inflicted by governmental negligence are not addressed by the United States Constitution is

> not to say that they may not raise significant legal concerns and lead to the creation of protectible legal interests The enactment of tort claim statutes, for example, reflects the view that injuries caused by such negligence should generally be redressed. It is no reflection on either the breadth of the United States constitution or the importance of traditional tort law to say that they do not address the same concerns. Id. at 333 (footnotes omitted).

The *Daniels* court spoke to exactly the kind of circumstances under consideration sub judice: as previously noted, Pennsylvania has created remedies for claimants such as Fessler, in the form of the Constables' bond. Furthermore *Daniels* makes clear that even if the Constables' actions were intentional Fessler still would not have a federal claim because Constables are also amenable to suit in state court for intentional torts. *Reuben v. O'Brien*, 299 PA. Super. 372, 455 A.2d 801, 803 (1982). Therefore Fessler could have brought suit against the Constables in state court whether he avers their actions were negligent or intentional (his pleading are not clear on this point).

Other federal courts have applied the reasoning of *Parratt* and *Hudson* to situations similar to the matter sub judice. In *Rile v. Jeffes*, 777 F.2d 143 (3d Cir. 1985), Judge Rosenn discussed a § 1983 claim in which a prisoner had averred that he had been robbed by a fellow inmate The prisoner contended that certain guards allowed some inmates to have keys to the cell blocks, thereby causing the loss of his property. The Court, noting that the prisoner had available state remedies for his claim of loss of property held that the prisoner did not state a claim under § 1983. Riley held that "[w]hether the loss *Riley* suffered in his cell that ocurred because of negligent or intentional disregard for the safety of his property is immaterial under *Hudson v. Palmer*...." *Riley*, 777 F.2d at 148. The same reasoning applies to Fessler: whether the Constables' actions were intentional or negligent, any claim

Fessler might have against the Constables would have a state remedy.

In *Engsberg v. Town of Milford*, 601 F. Supp. 1438 (W.D. Wis. 1985), the court considered an action against a town Constable for depriving the plaintiff of his property rights in dogs that the Constable had killed. The court looked to the state remedies available to the plaintiff and relied on *Parratt* and *Hudson* to find that the plaintiff had not stated a cause of action under § 1983. The court noted:

> Hudson and its progenitor, *Parratt v. Taylor*, stand for the proposition that a deprivation of property is not "without due process" if (1) a predeprivation hearing was impracticable; (2) the deprivation was random and unauthorized; and (3) state postdeprivation remedies for the property loss are adequate.

Ensberg, 601 F. Supp. At 1445 (citations omitted). Fessler's situation satisfies the elements that *Ensberg* lays out: given the nature of Fessler's claims, a predeprivation hearing was not practical; Fessler does not aver that the actions of the Constables were pursuant to state procedure - therefore the actions he avers ere random and unauthorized; and state postdeprivation remedies exist. Accordingly, Fessler does not have a viable claim against the Constables under § 1983. See also *Greece v. Gus*, 775 F.2d 161, 169 (7th Cir. 1985). ("post deprivation remedies provided all process that was due").

C. Romanoski's Motion to Dismiss for Failure to State a Claim

Fessler avers that "Peter Romanoski used the same car for the second judgment ...and tried to defraud" him. (Dkt. Entry 1 at 4.) Fessler offers no indication of how Romanoski acted to deny Fessler a fundamental civil right. Nor does he aver that

Romanoski is a state actor. A plaintiff must prove "state action" to satisfy the elements of a § 1983 suit. Our Circuit has clearly outlined the law in this area: "State action is a threshold issue in a Fourteenth Amendment claim. 'The deprivation must be caused by the exercise of some right or privilege created by the State...or by a person for whom the state is responsible,' and 'the party charged with the deprivation must be a person who may fairly be said to be a state actor.'" *Abbott v. Latshaw*, 164 F. 3d 141, 146 (3d Cir. 1998), cert. Denied, 119 S. Ct. 2393 (1999). *Abbott* went on, however, to note: "Although not an agent of the state, a private party who willfully participates in a joint conspiracy with state officials to deprive a person o a constitutional right acts 'under color of state law' for purposes of § 1983." Id. at 147-48. I view Fessler's complaint in the most lenient manner and still find that there is no averment that could satisfy the requirement that Romanoski acted "under color or law," or in a conspiracy with state actors. I fact, the state actors in question were acting at Fessler's behest and on his behalf - not in concert with Romanoski. Accordingly, I will grant Romanoski's motion to dismiss the complaint for failure to state a claim.

AND NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion of Defendant Michael Collins to Dismiss the Complaint on the grounds of judicial immunity (Dkt. Entry 6) is GRANTED.
2. The Motion of Defendants Lawrence Karis and Edward Holleran to Dismiss the Complaint for failure to State a Claim (Dkt. Entry 4) is GRANTED.
3. The Motion of Defendant Peter J. Romanoski to Dismiss t he Complaint for Failure to State a Claim (Dkt. Entry 15) is GRANTED.
4. The Clerk of Court is directed to mark this case CLOSED.

T/–
Thomas I. Vanaskie, Chief
Middle District of Pennsylvania

APPENDIX B

UNREPORTED- NOT PRECENDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD DISTRICT

JOSEPH A. FESSLER, *Appellant* v. *LAWRENCE KARIS, Constable; EDWARD HOLLERAN, Constable; PETER J. ROMANOSKI	No. 00-3442 (D.C. Civ. No. 99-cv-1324) **OPINION**

*(Amended per Clerk Order dated 7/11/00)

On Appeal From the
United States District Court
For the Middle District of Pennsylvania

District Judge:
Honorable Thomas I. Vanaskie

Submitted Under Third Circuit LAR 34.1(a)

August 27, 2001

Before:
ALITO, AMBRO AND ROSEN, Circuit Judges

(Filed September 28, 2001)

PER CURIAM

Pro se appellant Joseph Fessler appeals an order of the United States District Court for the Middle District of Pennsylvania granting defendants' motions to dismiss. We will affirm.

Fessler filed a complaint on July 27, 1989 against District Justice Michael Collins[1], Constables Lawrence Karis and Edward Karis and Edward Holleran, and Peter J. Romanoski. Apparently, Romanoski and Fessler were involved in a landlord - tenant dispute in Luzerne County that came before District Justice Collins for resolution.

District Justice Collins entered two judgments in the litigation between Fessler and Romanoski. In one action (CV-246-96) Romanoski was to pay Fessler $381.35, and in the other (LT-130-96) he was to pay Fessler $700.75. In addition, Constables Karis and Holleran ere to assist Fessler in acquiring Romanoski's car, which was to be transferred to Fessler in partial satisfaction of the judgments. Fessler alleges that there was a seven month delay in receiving the car's title, there was confusion over the place of the car's sale, the condition of the car was concealed, and District Justice Collins overvalued the car. Fessler also alleges that the same car was used to satisfy two different judgments. Fessler asserts that the Constables, who were supposed to help him receive satisfaction of the judgment, were in a conspiracy with Romanoski to defraud him and prevent him from receiving the full amount he was owed in satisfaction of the judgment.

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[1]Justice Collins passed away in May 2000.

The District Justice determined the value of the car to be $500.00 (see Letter by District Justice Collins, dated October 18, 1996, attached to Fessler's complaint). Fessler presented the District Justice with an estimate from a body shop which stated that the car needs $3000.00 worth of repairs. He also presented to the District Justice an estimate from a junk yard said the car was worth $75.00.

After receiving the complaint, all defendants filed motions to dismiss.[2] The District Court granted District Justice Collins's motion to dismiss on grounds of judicial immunity, and granted the other defendants' motions to dismiss for failure to state a claim.

Our review of the District Court's judgment is plenary. *Gallo v. City of Philadelphia*, 161 F.3d 217, 221 (3d Cir. 1998). We accept a true a factual allegations in the complaint and will affirm a dismissal under Rule 12(b)(6) only if it is certain that no relief can be granted under any set of facts that could be proved. Steamfitters Local Union No. 420 *Welfare Fund v. Phillip Morris Inc., et al.*, 171 F.3d 912, 919 (3d Cir. 1999).

Fessler vaguely alleges violations of the "Civil Rights Act of 1964, and Civil Rights Act of 1968, or any other Act of Civil Rights..." (Complaint at 5) by the defendants in relation to the satisfaction of the judgment. Under the generous pleading standard afforded pro se litigants, *see Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594 (1972), the District Court construed this as a claim of deprivation of property without due process of law pursuant to 42 U.S.C. § 1983.

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[2] District Justice Collins filed a motion to dismiss on grounds of judicial immunity Constables Karin and Holleran filed a motion to quash service or to dismiss for failure to state a claim, pursuant to Fed. R. Civ. P. 12 (b)(6), or for a definite statement under Fed. R. Civ. P. 12(e). Romanoski filed a motion to dismiss or quash service, to dismiss for failure to state a claim under Rule 12(b)(6), for a more definite statement under Rule 12(e), and/or to dismiss for lack of subject matter jurisdiction.

"Section 1983 provides a cause of action for violations of federally secured statutory or constitutional rights 'under color of state law.'" *Abbott v. Latshaw*, 164 F.3d 141, 145 (3d Cir 1998) (citing *West v. Atkins*, 487 U.S. 42, 48, 108 S. Ct. 2250 (1998)). "It is well established that procedural due process is implicated only where someone has claimed that there has been a taking or deprivation of a legally protected liberty or property interest. It is also well established that possessory interest in property invoke procedural due process protections." Id. at 146 (citations omitted). "To establish a cause of action for a violation of procedural due process, a plaintiff in addition to proving that a person acting under color if state law deprived him of a protected property interest must establish that the state procedure for challenging the deprivation does not satisfy the requirements of procedural due process." *Midnight Sessions, Ltd. v. City of Philadelphia*, 945 F.2d 667, 680 (3d Cir. 1991) (citing *Parratt v. Taylor*, 451 U.S. 527, 537, 101 S. Ct. 1908; 1914 (1981)).

The deprivation claimed by Fessler relates to the automobile he acquired in partial satisfaction of the judgment. Fessler alleges fraud and conspiracy by all defendants in setting the value of the automobile, moving the sale location and concealing the condition of the automobile. He also alleges that the car is worth far less than the value determined by the court, and it therefore fails to satisfy that portion of the judgment. District Justice Collins determined the value of the car to be $500.00. In the letter indicating this, district Justice Collins also indicated that either party had the opportunity to appeal the decision. As the District Court noted, it appears that Fessler appealed to the Court of Common Pleas of Luzerne County and the appeal was dismissed However, there is no indication of the grounds on which the appeal was dismissed.

Appealing the District Justice's decision was only one means of post-deprivation relief available to Fessler. Under Pennsylvania law,, Fessler could also petition to strike the entry of satisfaction of

judgment. Such a petition is a equitable device and relief should be granted when the satisfaction was entered by fraud or mistake. See Epstein v. Kramer, 365 Pa. 589, 76 A.2d 212 (1950); *Beck v. Beck*, 435 Pa. Super. 449 646 A.2d 589 (Pa. Super. 1994).

"[I]n challenging a property deprivation, the claimant must either avail himself of the remedies guaranteed by state law or prove that the available remedies are inadequate." *Hudson v. Palmer*, 468 U.S. 517, 53, 104 S. Ct. 3194, 3207 (1984) *(citing Parrat v. Taylor*, 451 US. 527, 537-544, 101 S. Ct. T908, 1914-1917 (1981)) (O'Connor. J., concurring). It is obvious that state remedial schemes were available for Fessler to address his alleged deprivation. It is equally clear that he did not avail himself of all of these remedies. The fact that these remedies are provided post-deprivation, as opposed to pre-deprivation, is of no consequence. *See Hudson*, 468 U.S. at 533, 104 S. Ct. at 3204 ("For intentional, as for negligent deprivations of property by state employees, the state's action is not complete until and unless it provides or refuses to provide a suitable post-deprivation remedy") (footnote omitted) (emphasis added). Because the state provides post-deprivation remedies, only one of which Fessler attempted to utilize, he was not deprived of a possessory interest without due process of law. The appellant has not established a claim under federal law.

For the foregoing reasons, we conclude that dismissal of Fessler's complaint under Fed. R. Civ.P. 12 (b)(6) as to defendants Karis and Holleran was appropriate. The District Court correctly dismissed the claims against District Justice Collins because he is not subject to suit under the doctrine of judicial immunity. Hughes v. Long, 242 F.3d 121, 125 (3d Cir. 2001) ("a judge acting in his judicial capacity is absolutely immune from suits, unless he acts without any colorable claim of jurisdiction"). Additionally, the claims against Romanoski were correctly dismissed because he did not act under color of state law and therefore is not subject to suit under § 1983. See *West v. Atkins*, 487 U.S. 42, 49 (1988) ("The traditional definition of acting under color of state law requires that

the defendant in a § 1983 action have exercised power 'possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of sate law.'" (citation omitted). Accordingly, we will affirm the judgment of the District Court.

TO THE CLERK:

Please file the foregoing opinion.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOSEPH A. FESSLER,

APPELLANT

v.

*LAWRENCE KARIS, Constable; EDWARD HOLLERAN, Constable; PETER J. ROMANOSKI

No. 00-3442

(*Amended per Clerk Oder dated 7/11/00)

SUR PETITION FOR REHEARING

Present:

BECKER, Chief Judge, SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, McKEE, RENDELL, BARRY, AMBRO, and FUENTES, Circuit Judges, and ROSENN, Senior Circuit Judge*

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated in the decision of this court and t al the other available circuit judges of the circuit in regular active service, and no judge who concurred in

the decision having asked for rehearing, an a majority of the circuit judges.

*As to panel rehearing only.

Of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,
S/–
Circuit Judge

Dated: Nov 28 2001
CLC\cc: JAF
JMB

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOSEPH A. FESSLER,	)	
	)	
Appellant	)	NO. 00-3442
	)	
v.	)	
	)	
*LAWRENE KARIS, Constable; EDWARD HOLLERAN, Constable; PETER J. ROMANOSKI	)	

(*Amended per Clerk Order dated 7/11/00)

On Appeal From the United States District Court

For the Middle District of Pennsylvania
(D.C. Civ. No. 99-1324)

District Judge: Honorable Thomas I. Vanaskie

Submitted Under Third Circuit LAR 34.1(a)
August 27, 2001

Before:
ALITO, AMBRO AND ROSENN, Circuit Judges

JUDGEMENT

This cause came on to be heard on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a). On

APPENDIX D

cosideratin whereof, it is now here

ORDERED AND ADJUDGED by this court that the judgment of the district court entered April 19, 2000, be and the same is hereby affirmed Each side to bear its own costs. All of the above in accordane with the opinion of this Court.

ATTEST:
N/–
Clerk

DATED: September 28, 2001

Certified as a true copy and issued I lieu of a formal mandate on December 7 , 2001

Teste:
M/–
Clerk, U.S. Court of Appeals
For the Third Circuit.